



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
WATER

June 21, 2013

RE: Freedom of Information Act Request EPA-HQ-2012-001120

Under this FOIA, with initial FOIA tracking number HQ-FOI-01482-12, responsive records were provided to the requestor on July 6, 2012, on or about August 8, 2012, and on October 31, 2012. Please Lars Wilcut to locate the responsive records that were provided. Mr Wilcut's contact information is:

Lars Wilcut  
Standard and Health Protection Division  
Office of Science and Technology  
[wilcut.lars@epa.gov](mailto:wilcut.lars@epa.gov)  
202-566-0447





## FOIA Request HQ-FOI-01482-12

Lars Wilcut to: Mendoza, Tony, Chung, David, Schwartz, Rich 10/31/2012 02:14 PM

Cc: Jennifer Brundage, Shari Barash, Evelyn Washington, Diane Jones-Coleman

From: Lars Wilcut/DC/USEPA/US  
To: "Mendoza, Tony" <AMendoza@crowell.com>, "Chung, David" <DChung@crowell.com>, "Schwartz, Rich" <RSchwartz@crowell.com>  
Cc: Jennifer Brundage/DC/USEPA/US@EPA, Shari Barash/DC/USEPA/US@EPA, Evelyn Washington/DC/USEPA/US@EPA, Diane Jones-Coleman/DC/USEPA/US@EPA

History: This message has been forwarded.

Tony,

Attached are several additional documents pursuant to your September follow-up to Freedom of Information Act request HQ-FOI-01482-12. Below is a description of how we have addressed each of your questions (bold italicized below). Please let me know if you have any further questions, and please let me know by **Wednesday, November 14, 2012** if you would like to request any further documents or whether we can close out this request.

Our costs incurred to date processing your request amount to \$2,359.

Lars

***As you know, we requested, as relevant here, all documents "regarding the regulation of nutrients" in the Mississippi River Basin "reflecting any discussions, conversations, or other communications" between EPA officials and the specifically listed environmental groups. We have a few questions about the "Interaction with Petitioners" documents that EPA has provided us pursuant to the FOIA request:***

***First, we see from the documentation provided that EPA met with representatives of these groups in October 2007, May 2009, and November 2009 to discuss Mississippi River Basin nutrient issues. No handwritten notes from EPA officials or internal EPA emails discussing these meetings were provided to us. Can you please either provide us these and other documents related to the meetings or confirm that no such documents exist?***

Attached are three sets of handwritten notes from the May 2009 meeting. Unfortunately a thorough search did not turn up any relevant records relating to the October 2007 meeting. We did not find any handwritten notes from the November 2009 meeting, but we are providing you with some other materials related to that meeting as described below.

Please note that the documents we are providing today were not considered in our decision to deny the petition to establish numeric nutrient criteria and total maximum daily loads (TMDLs) for the Mississippi-Atchafalaya River Basin and Gulf of Mexico, and therefore they were not included in our administrative record for the petition denial litigation. We did not provide these documents pursuant to your initial request because that request was limited to documents included in our administrative record for the petition denial.

Similarly, we did not include in the administrative record for the petition denial internal EPA e-mails discussing these meetings, and thus none were responsive to your initial FOIA request. Although we have not searched for these e-mails, we believe they are generally internal and pre-decisional/deliberative.

Also, you state above that EPA met with representatives from these groups to "discuss Mississippi River



Basin nutrient issues,” but please note that may not be an accurate characterization of the 2007 meeting, which occurred before the petition was submitted. These groups have a broad range of environmental concerns across the country other than nutrients about which they regularly engage EPA in discussion.

***Second, you provided EPA’s PowerPoint presentation from the May 2009 meeting. The emails indicate that petitioners were also giving a presentation at that meeting. If petitioners provided EPA with a presentation document (e.g. a PowerPoint document), would you provide that to us?***




The petitioners did not provide EPA with a copy of their presentation.



***Third, in an email dated October 1, 2009, Albert Ettinger of the Environmental Law & Policy Center stated, “We will get you detailed information on each issue well before the [November 2009] meeting.” Could you provide us this information?***



Attached are some e-mails related to the meeting and advance materials provided by Albert Ettinger. Again, initially we did not provide these materials because they were not in the administrative record for our petition denial litigation. Also, we did search for the follow-up information Mr. Ettinger planned to provide in his e-mail to Denise Keehner, but we were unable to locate it, and as far as we can tell he never followed up on this.



***Finally, in EPA’s response, it did not identify any responsive documents that it withheld on grounds of privilege or a FOIA exception. Can you confirm that EPA did not withhold any documents?***




Per your amended FOIA request from 6/27, EPA only identified as responsive those documents that were included in the administrative record for the petition denial litigation. Based on these search criteria EPA did not withhold any documents.



    
Manjali & Ettinger e-mail RE Nov mtg.pdf Oct. 23 09 Letter to EPA.pdf Hazel's notes from May 2009 mtg.pdf




   
Sam's notes from May 2009 mtg.pdf Pete's notes from May 2009 Mtg.pdf



   
Denise & Albert e-mail exchange 11-08-12.pdf 9-21-09-trien-rev-cmts.pdf

   
Tennessee-MC-Stiles-STP-Permit-Comments-Follow-Up.pdf Tennessee-MC-Stiles-STP-Permit-Comments.pdf

    
Petition-for-Review.pdf Petition-Follow-Up-Ltr-to-Jackson-at-EPA-FINAL3\_31\_09.pdf Petition-Final.pdf

   
Letter-to-Dr-J-Watson-re-Louisiana-Oct-9-09-H2O-program.pdf KGS-9-14-9-21-07-Report.pdf

    
KGS-8-1-08-Report.pdf KGS-5-30-08-Report.pdf grumbles-letter-with-attachments\_12-1-06.pdf

   
ex-A-2009-trien-rev.pdf CSGP-letter-to-EPA\_9-23-09-Final.pdf



**RE: FOIA request HQ-FOI- 01482-12- Assurance of payment**

**Holly Green** to: Chung, David

08/08/2012 04:26 PM

Cc: "Mendoza, Tony", Evelyn Washington, "Schwartz, Rich"

From: Holly Green/DC/USEPA/US  
To: "Chung, David" <DChung@crowell.com>  
Cc: "Mendoza, Tony" <AMendoza@crowell.com>, Evelyn Washington/DC/USEPA/US@EPA, "Schwartz, Rich" <RSchwartz@crowell.com>

Thanks, David. The cost should not go over the \$2700 at this time. There are a lot of documents in this round, so we are planning to put them on a CD and bring it over early next week.

Thanks,  
Holly

Holly Sage Green  
Acting Associate Branch Chief  
National Water Quality Standards Branch  
USEPA Office of Water

1200 Pennsylvania Avenue, NW (Mailcode 4305T)  
Washington DC 20460  
Phone: 202-566-0651

"Chung, David"

Holly - We apologize for the delay. Please proc...

08/07/2012 03:16:56 PM

From: "Chung, David" <DChung@crowell.com>  
To: Holly Green/DC/USEPA/US@EPA, "Schwartz, Rich" <RSchwartz@crowell.com>, "Mendoza, Tony" <AMendoza@crowell.com>, Evelyn Washington/DC/USEPA/US@EPA  
Date: 08/07/2012 03:16 PM  
Subject: RE: FOIA request HQ-FOI- 01482-12- Assurance of payment

Holly -

We apologize for the delay. Please proceed with processing our request. If you anticipate exceeding the total cost estimated in your July 24, 2012 letter (\$2,700) in responding to our request, please let us know in as soon as possible.

Thanks,

David Y. Chung  
Crowell & Moring LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004  
202.624.2587 (phone)  
202.628.5116 (fax)  
DChung@crowell.com  
www.crowell.com



**From:** Holly Green [mailto:Green.Holly@epamail.epa.gov]  
**Sent:** Tuesday, August 07, 2012 11:44 AM  
**To:** Schwartz, Rich; Mendoza, Tony; Chung, David; Evelyn Washington  
**Subject:** RE: FOIA request HQ-FOI- 01482-12- Assurance of payment

Hi Rich,

Just checking in- any word on the assurance of payment and finalizing the document request?

Thanks,  
Holly

Holly Sage Green  
Acting Associate Branch Chief  
National Water Quality Standards Branch  
USEPA Office of Water

1200 Pennsylvania Avenue, NW (Mailcode 4305T)  
Washington DC 20460  
Phone: 202-566-0651

▼ Holly Green---07/24/2012 10:56:40 AM---Great, thanks! Holly

From: Holly Green/DC/USEPA/US  
To: "Schwartz, Rich" <RSchwartz@crowell.com>  
Cc: "Mendoza, Tony" <AMendoza@crowell.com>, "Chung, David" <DChung@crowell.com>, Evelyn Washington/DC/USEPA/US@EPA  
Date: 07/24/2012 10:56 AM  
Subject: RE: FOIA request HQ-FOI- 01482-12- Assurance of payment

Great, thanks!

Holly

Holly Sage Green  
Acting Associate Branch Chief  
National Water Quality Standards Branch  
USEPA Office of Water

1200 Pennsylvania Avenue, NW (Mailcode 4305T)  
Washington DC 20460  
Phone: 202-566-0651

▼ "Schwartz, Rich" ---07/24/2012 10:41:08 AM---Thanks, Holly. That shouldn't be a problem. We'll notify our clients and get back to you as quickl

From: "Schwartz, Rich" <[RSchwartz@crowell.com](mailto:RSchwartz@crowell.com)>  
To: Holly Green/DC/USEPA/US@EPA, "Mendoza, Tony" <[AMendoza@crowell.com](mailto:AMendoza@crowell.com)>, "Chung, David" <[DChung@crowell.com](mailto:DChung@crowell.com)>  
Cc: Evelyn Washington/DC/USEPA/US@EPA  
Date: 07/24/2012 10:41 AM  
Subject: RE: FOIA request HQ-FOI- 01482-12- Assurance of payment

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Thanks, Holly. That shouldn't be a problem. We'll notify our clients and get back to you as quickly as we can.  
- Rich

**From:** Holly Green [<mailto:Green.Holly@epamail.epa.gov>]  
**Sent:** Tuesday, July 24, 2012 9:22 AM  
**To:** Schwartz, Rich; Mendoza, Tony; Chung, David  
**Cc:** Evelyn Washington  
**Subject:** FOIA request HQ-FOI- 01482-12- Assurance of payment

Rich, Tony, David,

We are nearing completion of the second and third parts of your amended FOIA request on nutrients in the Mississippi River Basin. We have not yet surpassed the \$2,000 mark, but wanted to let you know, per your letter and FOIA requirements, that we anticipate exceeding that amount (the estimated cost for the request agreed to on June 27 is \$2,700.) Per FOIA requirements, please find attached an assurance of payment letter that asks you to respond as to whether you agree to pay the amount needed to complete this portion of the request. We will need your response by August 8 (but hopefully sooner) in order to complete the request.

Thanks,  
Holly

*(See attached file: assurance of payment letter 07-24-12 - signed.pdf)*

Holly Sage Green  
Acting Associate Branch Chief  
National Water Quality Standards Branch  
USEPA Office of Water

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Washington DC 20460  
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## EPA FOIA Response Part 1(a)

Holly Green to: Schwartz, Rich, Mendoza, Tony, Chung, David

07/06/2012 09:18 AM

Cc: Peter Ford, Evelyn Washington, Jennifer Brundage, Lars Wilcut

From: Holly Green/DC/USEPA/US  
To: "Schwartz, Rich" <RSchwartz@crowell.com>, "Mendoza, Tony" <AMendoza@crowell.com>, "Chung, David" <DChung@crowell.com>  
Cc: Peter Ford/DC/USEPA/US@EPA, Evelyn Washington/DC/USEPA/US@EPA, Jennifer Brundage/DC/USEPA/US@EPA, Lars Wilcut/DC/USEPA/US@EPA  
History: This message has been replied to.

Rich, David, and Tony,

This e-mail is in response to the first part of your amended Freedom of Information Act Request for "all principal/important documents re EPA's past, present, and future policy re regulation of nutrients in the MARB (although the majority will be national in scope, not MARB-specific) from 1998 through the present."

Please find below a list of these documents and links to their locations on the web. We have attached a couple of the documents in PDF format that were not easily accessible as a complete document via the website.

Some of these documents cover both important policy and "scientific underpinnings" of that policy. All of these documents are included in our administrative record for the lawsuit.

We hope to be able to send you the remaining documents you requested the week of July 23. Please let me know if you have any questions.

Holly Sage Green  
Acting Associate Branch Chief  
National Water Quality Standards Branch  
USEPA Office of Water

1200 Pennsylvania Avenue, NW (Mailcode 4305T)  
Washington DC 20460  
Phone: 202-566-0651

- *1998 Clean Water Action Plan (also attached below)*  
<http://nepis.epa.gov/Exe/ZyNET.exe/20004J7S.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1995+Thru+1999&Docs=&Query=&Time=&EndTime=&SearchMethod=1&To cRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&Int QFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data% 5C95thru99%5Ctxt%5C00000012%5C20004J7S.txt&User=ANONYMOUS&Password= anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQual ity=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=Zy ActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1 &SeekPage=x&ZyPURL>
- *1998 National Strategy for Developing Nutrient Criteria*  
[http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/nutrient\\_stra](http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/nutrient_stra)

[tegy\\_1998.pdf](#)

- 2001 Grubbs memo  
[http://water.epa.gov/scitech/swguidance/standards/upload/2009\\_01\\_21\\_criteria\\_nutrient\\_nutrientswqsmemo.pdf](http://water.epa.gov/scitech/swguidance/standards/upload/2009_01_21_criteria_nutrient_nutrientswqsmemo.pdf)
- 2007 Grumbles memo  
<http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/memo2007.cfm>
- 2011 Stoner memo  
[http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo\\_nitrogen\\_framework.pdf](http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf)
- 2009 NITG Urgent Call to Action (part policy, part scientific underpinnings)  
[http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/2009\\_08\\_27\\_criteria\\_nutrient\\_nitgreport.pdf](http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/2009_08_27_criteria_nutrient_nitgreport.pdf)
- OIG Report 2009 "EPA needs to accelerate adoption of numeric nutrient water quality standards"  
<http://water.epa.gov/scitech/swguidance/standards/library/upload/oigreport.pdf>
- 2003 Sierra Club petition response:  
<http://water.epa.gov/scitech/swguidance/standards/SierraClub.cfm>
- 2001 Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters (also attached below)  
<http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/marine/index.cfm>
- 2000 Nutrient Criteria Technical Guidance Manual: Rivers and Streams  
<http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/rivers/index.cfm>
- 2000 Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs  
<http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/lakes/index.cfm>



Nutrient Criteria Technical Guidance Manual\_Estuarine and Coastal Waters\_2001\_EPA-822-B-01-003.pdf



1998 Clean Water Action Plan.pdf